IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 193 OF 2003

Shri Rajaram Rau Patil, of Kumathe,
aged about 73 years, occupation
agriculture, r/o. Maida, Post Kurdi,
Taluka Sanguem, Goa and occasionally
at 776, near Khanbhag Police Chowki,
Khanbhag, Sangli 416 416
(Maharashtra State). ..... Petitioner.

V/s.

1. Shri Marcel de Pieade Braganza,
(spelt also as Braganca)
aged about 73 years, landlord,
r/o. Malbhat, Margao, Goa.

2. Smt. Maria Amalia Violanda Baetuz
Mascarenhas Braganza, wife of
Marcel de Pieade Braganza aged about
72 years, occupation household work,
r/o. Malbhat, Margao, Goa.

(stand deleted as per Order dated 20.3.03).

3. Smt. Ponnamma Cherian (since deceased)
represented by heirs :

3a. Shri T.K Cherian,
3b. Shri Mathew P Cherian,
3c. Mrs. Jessy Paul,
3d. Dr. Paul P. Babu,
3e. Mrs. Susy Thomas,
3f. Dr. E. Thomas,
3g. Shri T.C. Kochukoshy,
3h. Mrs. Susa Kochukoshy.

All major, occupation of all business,
Nos. 3-a, 3-b, 3-h
resding at Pondakosalayil,
Belhaven, Trivendrum, Kerala.
Nos.3-c & 3-d residing at Pottakal House,

Vettoor, Hallad, Muvattupuzha,
Kerala.

4. Shri C.M. Mathew, age major, occupation business c/o. Adv. D.R. Dukle, Quepem, Goa.

5. Shri Mohammed Zacharia, age major, occupation business, C/o. Tropical Fibres, Sanguem, Goa.

6. Shri Anandrao Raosaheb Patil, aged about 70 years, occupation agriculture, r/o. Bilaskar Wada, Near Gore Mangal Karyalaya, Gaonbhag, Sangli, Maharashtra State.

7. Shri Ganpati Dnyanu Jagdale, aged about 70 years, occupation agriculture, r/o. `Maida' Post Kurdi, Tal. Sanguem, Goa and occasionally at Kosabe Digraj, Tal. Miraj, District Sangli Maharashtra State. ..... Respondents.

Shri S.G. Dessai, Sr. Advocate with Mr. Shivan Dessai, Advocate for the petitioner.

Shri M.S. Usgaonkar, Sr. Advocate with Mr. Sudesh Usgaonkar, Advocate for respondents No.3(a) to 3(h) and respondent No.4

Respondent No.6 though served, absent.

Shri P.A. Kholkar, Advocate for respondent No.7.

CORAM : S.S. PARKAR, J.

DATE : 9TH JUNE, 2005.

ORAL JUDGMENT :

Rule. By consent, rule is made returnable forthwith. By consent of the parties, the petition is heard finally and is being finally disposed of by this Judgment. Counsel for the respondents waive service.

2. By the present petition, the petitioner challenges the Order of the trial Court dated 22.10.2001, disallowing the application bearing Civil Misc. Application No. 179/2000/A in Special Civil Suit No.9/88/A made on behalf of the original plaintiff. The said application was for amendment of the plaint to implead the proposed defendants on the ground that during the pendency of the suit, the suit land was transferred by defendant No.3 in their favour.

3. The suit was filed for a declaration by the plaintiff that he has entered into lease agreement with the owners of the land which is an agricultural land of defendants No.1 and 2 and by virtue of the clause in the said agreement he was entitled to purchase the said land. Defendant No.3 was joined as a person to whom the land was sold by the owners i.e. defendants No.1 and 2. After institution of the suit, the plaintiff learnt that defendant No.3 had agreed to sell the said property to the proposed defendants No.8 to 12 and, therefore, he wanted to implead them as the defendants in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit and to avoid multiplicity of proceedings.

4. This litigation has a chequered history which was pointed out across the Bar, which is not necessary to state while disposing of the present petition. The suit was filed on 19.4.1988. According to the plaintiff, defendant No.3 agreed to sell the property to the proposed defendants on 9.5.1988 and, therefore, the application was made on 23.5.1988 which is exhibit-5. That application remained pending in the trial Court because in the meantime, ex-parte injunction order which was granted in favour of the plaintiff, was vacated and because of which the plaintiff had to challenge the same in this Court, in appeal. Since that appeal against vacation of the ex-parte injunction order was filed in this Court, record and proceedings were called for by this Court on 6.10.1988 and the said records remained in this Court for a period of about one decade due to the pendency of the said appeal, as a result of which, the application made in the trial Court as early as 23.5.1988 remained pending in the trial Court. The said record was remitted back to the trial Court after dismissal of the plaintiff's appeal on 3.7.1998 and thereafter, the application made on 23.5.1988 was taken up for hearing in the trial Court. That application was dismissed by the trial Court by passing the following order, on 19.9.2000:

> “Dismissed as not pressed for last 12 years, with liberty to file fresh".

I see no wisdom in not pressing for the said application and thereafter obtaining liberty to file a fresh application. In any way, the plaintiff's

Advocate had chosen to do so and the Court had passed such an order. Thereafter, the present application was made again for amendment of the plaint under Order 6, Rule 17 of the C.P.C. to implead the proposed defendants No.8 to 12 on the ground that after institution of the suit, defendant No.3 had illegally sold the suit property to the proposed defendants. That application was rejected on 22.10.2001, which is impugned in this writ petition by the petitioner/plaintiff.

5. The reason given in paragraph 8 of the impugned order for rejecting the application is that the plaintiff had failed to show as to how the proposed parties were either necessary or proper parties in order to decide the present controversy. It is also observed in paragraph 8 that admittedly the agreement of sale did not create any right in the immovable property and therefore, the interest of the plaintiff was well safeguarded by the provisions of Section 53(a) of the Transfer of Property Act. In paragraph 9, reference is made to the rejection of earlier amendment application by the trial Court, as the plaintiff had failed to press the said application for many years. Then there is also reference to the abatement of the suit on the ground that the defendants No.1, 2 and 3 had died and their heirs were not brought on record.

6. In so far as last ground is concerned, it is not in dispute that heirs of defendant No.3 have been brought on record and in so far as

defendants No.1 and 2 are concerned, they appear to have died without leaving any heirs and therefore, an application is made for holding an inquiry under Order 22, Rule 4-A C.P.C. and the inquiry is pending in that behalf.

7. In so far as rejection of the earlier application for amendment is concerned, the trial Court while dismissing the said application, had given liberty to the plaintiff to file a fresh application and, therefore, the second application cannot be dismissed on the ground of dismissal of the earlier application. I see no reason why that application was dismissed as not pressed for, since for most of the period, the record and proceedings in the said suit were before this Court and therefore, the application could not have been taken up for hearing before the trial Court. In any event, liberty to file fresh application was granted by the trial court while dismissing the said application.

8. The rejection of the application on the ground that the proposed parties are not necessary or proper parties in order to decide the controversy arising in the suit cannot be upheld in view of the provisions of Order 1, Rule 10 of C.P.C.. The trial Court ought to have allowed the application in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit and to avoid multiplicity of proceedings. In the reply to the said application for

amendment it was pointed out by defendant No.4 that there was not only agreement to sell, but the sale was effected in favour of the third parties who were proposed to be impleaded as party defendants. Relying on the reply affidavit dated 3.2.2001 filed on behalf of the defendant No.4, it was contended by the counsel for the petitioner that though the application was made to implead the proposed defendants on the ground that there was an agreement for sale, but now it appears that in fact there is a sale and therefore, it is all the more necessary to implead the proposed defendants. When the plaintiff made the application he was knowing only about the agreement of sale and accordingly, application was made. It was only in the reply affidavit that it was pointed out that in fact sale was also effected subsequently. In my opinion, it would not make any difference, except that while amending the plaint, the plaintiff may have to make appropriate averments on the basis of the sale effected in favour of the proposed defendants.

9. On behalf of the respondent, reliance is placed on the Judgment of the Supreme Court in the case of ***Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and ors.*** ((1992) 2 SCC 524). That Judgment does not deal with the provisions of Order 1, Rule 10 C.P.C. with which this petition is concerned. What is laid down in paragraph 14 of the Judgment on which reliance is placed by the Counsel for the respondents is that the person to be joined must be one

whose presence is necessary as a party. It is further observed that what makes a person necessary party is not merely that he has relevant evidence to give on some of the questions involved which would only make him a necessary witness nor merely because he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. Undoubtedly, in this case, the claim of the petitioner is that he is entitled to purchase the land, in question, by virtue of the clause in the lease agreement and also by virtue of his alleged agricultural tenancy. If the suit is decided in his favour, the same may affect the rights of the plaintiff vis-a-vis the proposed defendants and vice versa who may claim to have purchased the property from defendant No.3. Unless they are impleaded as defendants in the suit, there would be multiplicity of proceedings which may have to be initiated either by the plaintiff, against the proposed defendants if he succeeds in the suit, or by the proposed defendants. The trial Court was, therefore, not right in disallowing the application for impleading the proposed defendants in the suit. In my view, the proposed defendants are necessary parties or in any case, proper parties for effectually and completely adjudicating upon and settling all the questions involved in the suit and to avoid multiplicity of proceedings

9. In the result, this petition is allowed and the Civil Misc. Application No.179/2000/A to implead the proposed defendants as

defendants No.8 to 12 is allowed with costs of Rs.3000/- , payable to respondent No.3. The amendment shall be carried out within a period of four weeks from today. Rule is made absolute accordingly.

S.S. PARKAR, J.

ssm.